

NUTRITION SERVICES DIVISION MANAGEMENT BULLETIN		No. 00-118
TO:	All Sponsors of National School Lunch and School Breakfast Programs County Superintendents of Schools Diocesan Superintendents of Schools	ISSUE DATE: November 2000
ATTENTION:	Food Services Directors	
SUBJECT:	Beverage and Snack Agreements	
REFERENCE:	Title 7, Code of Federal Regulations (7 CFR), Sections 3016 and 3019	

This Management Bulletin transmits information received from the U.S. Department of Agriculture's Food and Nutrition Service (FNS) on the subject of federal regulatory requirements for exclusive contracts between child nutrition program sponsors and vendors of beverages and snacks.

In some cases, these exclusive contracts do not involve nonprofit school food service account funds, and no federal procurement issues are involved. However, if a sponsor purchases any products for the nonprofit school food service by means of such a contract, the contract must meet all federal procurement requirements specified in Title 7 of the Code of Federal Regulations (7 CFR) Sections 3016 (public agencies) and 3019 (private nonprofit agencies).

These federal regulations require that all procurement transactions, without regard to dollar value, "shall be conducted in a manner that provides maximum open and free competition." [7 CFR 3016.36(c)(1); 7 CFR 3019.43] All sponsors must maintain documentation to show that the contract was awarded using appropriate procurement procedures and that the final selection is the most efficient and economical for the child nutrition program(s). In addition, if the contract includes products to be used by the nonprofit school food service, the sponsor must deposit a portion of all commissions, considerations, donations (including scholarship funds), or any other funds the sponsor receives, in the child nutrition account for the child nutrition program's use. The amount deposited shall be prorated according to the participation of the child nutrition program(s) in the contract.

Many exclusive beverage and snack contracts are multi-year. There is no federal prohibition against multi-year contracts except in the case of contracts with food service management companies. However, USDA recommends that procurement officials consider the impact and appropriateness of multi-year (as opposed to one-year) contracts for beverages and snacks. Long-term contracts may be more appropriate for nonperishable products and services such as warehousing and equipment rental.

The following citations from federal regulations describe additional sponsor procurement requirements:

Code of Conduct

A written code of conduct shall govern the performance of employees engaged in the award and administration of the contract. No employee shall participate in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. [7 CFR 3016.36(b)(3); 7 CFR 3019.42]

Employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or proposed contractors. [7 CFR 3016.36(b)(3)(iv); 7 CFR 3019.42]

Selection Procedures

The request for proposal (RFP) or invitation to bid shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not contain features that unduly restrict competition. [7 CFR 3016.36(c)(3)(i); 7 CFR 3019.44(a)(i)]

The RFP or invitation to bid shall clearly set forth all requirements that vendors must fulfill and all other factors to be used in evaluating bids. [7 CFR 3016.36(c)(3)(ii); 7 CFR 3019.44(a)(ii)]

Access to Contractor Records

The sponsor shall include in the contract a provision for access to the contractor's records by the sponsor and the federal government or any of their duly authorized representatives. [7 CFR 3016.36(i)(10); 7 CFR 3019.48(d)]

As with other child nutrition program records, contract records shall be retained for three years after the final payment is made. [7 CFR 3016.36(i)(11); 7 CFR 3019.53(b)]

If you have any questions, please contact Jim Lane, Program Analyst, Nutrition Program Management Unit, at (916) 323-2479, (800) 952-5609, or jlane@cde.ca.gov.

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